STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 1, 2008
v	No. 277573 Gratiot Circuit Court
JOHN CLARENCE BRYNER, Defendant-Appellant.	LC No. 06-005257-FC

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of two counts of criminal sexual conduct in the first degree (CSC I), the victim being under 13 years of age, MCL 750.520b(1)(a), and one count of CSC I, the victim being at least 13 years of age but less than 16 years of age and defendant being a member of the same household as the victim, MCL 750.520b(1)(b)(i). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecution alleged that defendant engaged in sexual penetration of complainant on two occasions when she was under 13 years of age, and on one occasion when she was 15 years of age. Defendant denied engaging in such conduct with complainant when she was under 16 years of age.

Two women, who were adults at the time of trial, testified that defendant sexually abused them when they were children. The abuse included digital penetration and oral sex. Defendant admitted that he engaged in sexual behavior with these prior victims.

Defendant requested that the trial court read CJI2d 4.11 (Evidence of Other Offenses—Relevance Limited to Particular Issue).[1] The trial court declined the request, concluding that

[1] This instruction informs the jury that, if it believes that the accused committed the other, uncharged acts, it must consider the evidence only for limited purposes, and is not to decide that (continued…)

because the testimony given by the prior victims was offered pursuant to MCL 768.27a, which allows the introduction of similar acts evidence in a case in which the defendant is accused of committing any of certain offenses against a minor, the proper instruction to read was CJI2d 5.8b (Evidence of Other Acts of Child Sexual Abuse).[2]

The jury convicted defendant as charged. The trial court sentenced defendant to concurrent terms of 22 to 35 years in prison, with credit for 38 days.[3]

We review "jury instructions in their entirety to determine whether the trial court committed error requiring reversal." *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). "Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights." *Id.* Further, "[e]rror does not result from the omission of an instruction if the charge as a whole covers the substance of the omitted instruction." *Id.* We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

MCL 768.27a provides:

> (1) Notwithstanding section 27, in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.
>
> (2) As used in this section:
>
> (a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.[4]
>
> (b) "Minor" means an individual less than 18 years of age.

(…continued)

the evidence demonstrates that defendant is a bad person, or that he or she likely committed the charged crimes.

[2] This instruction informs the jury that, if it finds that the defendant committed the other, uncharged acts, it may consider those acts in determining whether the defendant committed the charged offenses.

[3] Defendant's minimum sentence exceeded the guidelines. The trial court did not inform defendant that he had the right to appeal his sentence on that ground, as required by MCR 6.425(F)(4). Defendant has not challenged the length of his sentence on appeal.

[4] The offense of CSC I is a "listed offense." See MCL 28.722(e)(x).

On appeal, defendant does not challenge the admissibility under MCL 768.27a of the testimony of defendant's prior victims. Rather, defendant argues that this other acts evidence should have been treated as such evidence generally under MRE 404(b)(1), and that the trial court erred by refusing to read CJI2d 4.11 to instruct the jury that this evidence was not admissible to show that he was a bad person or that he committed the offenses with which he was charged. We disagree.

In *People v Pattison*, 276 Mich App 613, 619-620; 741 NW2d 558 (2007), this Court stated:

> When a defendant is charged with a sexual offense against a minor, MCL 768.27a allows prosecutors to introduce evidence of a defendant's uncharged sexual offenses against minors without having to justify their admissibility under MRE 404(b). In many cases, it allows evidence that previously would have been inadmissible, because it allows what may have been categorized as propensity evidence to be admitted in this limited context.

"MCL 768.27a is a substantive rule of evidence because it does not principally regulate the operation or administration of the courts." *Id*. at 619. Therefore, because MCL 768.27a addresses an issue of substantive law, it prevails over a rule such as MRE 404(b)(1). *People v Watkins*, 277 Mich App 358, 363; 745 NW2d 149 (2007); *People v McGuffey*, 251 Mich App 155, 165; 649 NW2d 801 (2002).

In this case, the testimony offered by defendant's prior victims, if believed by the jury, tended to increase the probability that defendant committed the charged offenses. The evidence was relevant for purposes of MCL 768.27a, and was admissible under that statute, without regard to its admissibility under MRE 404(b)(1). Thus, the trial court did not err by reading CJI2d 5.8b, an instruction that specifically concerns evidence admitted under MCL 768.27a, and by declining to read CJI2d 4.11, an instruction that deals with testimony admitted under MRE 404(b)(1). The trial court committed no instructional error requiring reversal.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette